V. V. V. MENON v. HENRI PIGEONNEAU

[C. A. (Whyatt C.J. (S), Thomson C.J. (F.M.) and Knight J.) February 5, 1957]

[Singapore — Civil Appeal No. 20 of 1956]

Negligence — Claim for damages for personal injuries — Res ipsa loquitur.

This was an appeal against the judgment of the learned trial Judge in dismissing a claim for personal injuries arising out of a collision between defendant's car and the plaintiff's car. At the trial the plaintiff called evidence to show that the defendant was negligent and in addition he raised the doctrine of *res ipsa loquitur*, as the facts showed that the defendant's car suddenly turned across Mountbatten Road on to its wrong side of the road and there collided with the plaintiff's car which was being driven in a normal manner on its correct side in its opposite direction. The learned trial Judge held on the facts that the plaintiff had failed to prove negligence and dismissed the claim.

Held: (1) the doctrine of *res ipsa loquitur* applied in this case and the onus was therefore on the defendant of proving that he was not negligent and of rebutting the *prima facie* case established against him by the *res ipsa loquitur* principle;

(2) the defendant had on the facts failed to discharge the onus on him and therefore the plaintiff should be awarded damages for the personal injuries sustained by him.

Cases referred to :—

(1) *Southport Corpn. v. Esso Petroleum Co.* (1954) 2 All E.R. 561.

(2) *Barkway v. South Wales Transport* (1950) 1 All E.R. 392; (1950) A.C. 185.

(3) *Woods v. Duncan* (1946) A.C. 427.

CIVIL APPEAL.

Denis Murphy for the appellant.

F. R. N. H. Massey for the respondent.

Whyatt C.J. : — The plaintiff appeals from a judgment of the learned trial Judge dismissing his claim for damages for personal injuries which he alleged were caused by the negligence of the defendant when the defendant's car came into collision with the plaintiff's car in Mountbatten Road on the 14th November 1955. At the hearing in the Court below the plaintiff sought to prove an affirmative case of negligent driving against the defendant by calling two persons, by name Mrs. Chapman and Miss Chapman, who were travelling in the defendant's car at the time of the accident, and there can be little doubt that if the learned trial Judge had accepted their evidence he would have found for the plaintiff. In addition to the arguments on the affirmative case of negligence, there was some discussion as to whether the principle *res ipsa loquitur* applied. According to the Judge's notes, counsel for the defendant in opening his case remarked that the plaintiff did not appear to be relying on the doctrine of *res ipsa loquitur*, to which counsel for the plaintiff replied that he was not relying on this doctrine. It was not suggested by counsel for the defendant that it was not open to the plaintiff on the pleadings to rely upon *res ipsa loquitur* if he chose to do so, but rather that the evidence called by the plaintiff appeared to be directed to proving an affirmative case of negligence; and indeed I think it could not have been successfully contended that the facts pleaded in the Statement of Claim were insufficient to enable the plaintiff to rely on a plea of *res ipsa loquitur* if he wished to base his claim on that doctrine. In spite, however, of the statement of counsel for the plaintiff that he did not rely on the doctrine, it does not appear that this was interpreted by counsel for the defendant or by the learned Judge to mean that the plea of *res ipsa loquitur* had been completely abandoned since in his final address, counsel for the defendant submitted arguments to the Court on this issue, citing *Southport Corporation v. Esso Petroleum Co.*[1] as the latest authority on the subject, and the learned Judge himself, in his judgment, dealt with this aspect of the case, as he said, for the sake of completeness. The issue of *res ipsa loquitur* was, therefore, kept alive throughout the case in the Court below and therefore I am of the opinion that it is open to the plaintiff to rely upon it in this appeal. The position would, of course, be different if the defendant could show that the plea had clearly been abandoned by the plaintiff in the Court below. In that event it would not be open to the plaintiff to resurrect it for the purpose of this appeal; such a procedure would be both embarrassing and unfair to a defendant who had conducted his case on the basis that he was not required to deal with any thing except an affirmative case of negligent driving. For the reasons I have given, I am of the opinion that the plaintiff is entitled to rely upon the doctrine of *res ipsa loquitur* in this appeal.

The importance of this question becomes immediately apparent upon an examination of the learned Judge's findings. He rejected the evidence of Mrs. Chapman and Miss Chapman on the ground that they were "generally unreliable on all important points" and without their evidence the plaintiff's affirmative case of negligent driving failed. The learned trial Judge assessed the value of the testimony of these witnesses after seeing them give evidence in the witness box and in my opinion, this Court should not, in the circumstances of this case, differ from the finding of the trial Judge on this point. In the result the plaintiff cannot, on this appeal, successfully contend that he has proved an affirmative case of negligent driving and he must perforce rely upon the doctrine of *res ipsa loquitur*.

This doctrine is sometimes referred to as a principle of law but it is, in fact, no more than a rule of evidence of which the essence is, as Lord Radcliffe pointed out

in *Barkway v. South Wales Transport*[2] that an event which in the ordinary course of things is more likely than not to have been caused by negligence is by itself evidence of negligence. The event which the plaintiff relies upon in this case as evidence of negligence is that the defendant's car suddenly turned across Mountbatten Road on to its wrong side and there collided with the plaintiff's car which was being driven in a normal manner on its correct side in the opposite direction. In the ordinary course of things, such an event does not happen if the driver of the car is using proper care and the fact that it did happen in this case establishes a *prima facie* case of negligence against the defendant. The plaintiff, therefore, succeeds unless the defendant rebuts this *prima facie* case which he may do in one of two ways; either he may prove that the event, that is to say, the sudden turn of the car across the road on to its wrong side was due to a specific cause and such cause was not attributable to lack of care on his part, or, that the event is due to some cause unknown but that he himself throughout exercised reasonable care. I now turn to consider the application of these principles to the facts of this case.

The first argument advanced by the defendant was that the sudden turning of his car on to the wrong side of the road was due to a skid and that the skid happened, not because of any lack of care on his part, but because of some defect in the car itself. The evidence as to whether the movement of the car across the road was due to a skid is conflicting. The defendant himself says it was a skid, and this is confirmed by a Mr. Rotra, an independent eye-witness, who was called by the defendant. As against this, there is the uncontradicted evidence that there were no skid marks or indeed any marks of any kind on the road. Mr. Pope, an expert witness, called by the plaintiff said that he would expect to see some marks on the road if there had been a skid and Mr. Riley, the defendant's expert, said that if the wheels skid sideways (which I take it they do in a skid), marks would be left on the road. It seems to me improbable, to say the least, that this car could have suddenly skidded from one side of this wide road to the other without leaving any marks of any kind on the road. The onus is on the defendant, not on the plaintiff, to prove that this movement across the road was a skid, if he wishes to rebut the plea of *res ipsa loquitur* by showing that the accident was the result of a skid which happened without his negligence, and if he fails to do so, then his case on this point fails *in limine*. In my judgment the defendant has not discharged that onus; at best it is left in doubt as to whether this was a skid or not. Assuming, however, for the purpose of argument, that this was a skid, has the defendant proved that it was due to some defect in the car and not to any negligence on his part? The defendant's evidence in support of this part of his case was provided by the expert, Mr. Riley, who said that this type of car, a Renault 750, had a very definite tendency to skid on corners owing to what he called "oversteer", that is, the tendency of the rear of the car to carry on in a straight line whilst the front is turning; and he added that this particular bend where the accident occurred is a corner where one is likely to get oversteer. The plaintiff's expert witness, on the other hand, said that the Renault 750 had no tendency to oversteer to any extent and that it would be impossible to get into a dry skid such as is said to have occurred in this case unless you did something wrong. The evidence of the experts on this point is, therefore, conflicting and inconclusive. Moreover it seems to me highly improbable that a car of this type, in common every day use on the roads, could be so affected by inherent vice, to borrow a phrase from the language of commerce, as to make it suddenly skid across the road as though possessed by a gremlin, if the driver had throughout been exercising reasonable care. But again, I would point out the onus is on the defendant, not on the plaintiff, to prove this and in my opinion, he has failed to discharge it.

It remains to consider the alternative line of defence that even if the cause of this sudden movement of the car across the road is left unexplained — if the mystery remains unsolved, as Lord Russell of Killowen said in the case of *Woods v. Duncan*[3] nevertheless the defendant has proved affirmatively that he at all material times exercised reasonable care. The defendant's evidence on this point is somewhat sketchy. He states that he drove round the bend at a safe speed of 30-35 miles per hour, that he did not apply his brakes and that he was paying attention to his driving. In his statement to the police, he mentioned that he released the accelerator, but his own expert witness, Mr. Riley, said that the remedy would have been to accelerate and he even went so far as to say that if the speed of the car had not been reduced, it should not have got out of control. The plaintiff's expert, Mr. Pope, on the other hand, said that a skid or oversteer could not be induced by decelerating. It is not, I think, inaccurate to describe the evidence on this aspect of the case as confusing and even bewildering. All that the defendant can be said to have proved with any particularity is that when the car suddenly cavorted across the road, he decelerated but he did not apply his brakes. The question is whether this is sufficient to establish that the defendant was not negligent. The onus is on the defendant to prove affirmatively that throughout he exercised reasonable care and did everything that a reasonable careful and competent driver would have

done in these circumstances. For my part I am not satisfied that to decelerate and not to apply the brakes was all that could and should have been done by a careful driver in this situation. It follows, therefore, in my view that the defendant has not discharged the onus which rests on him of proving that he was not negligent and therefore he has failed to rebut the *prima facie* case established against him by the *res ipsa loquitur* principle in this case. Accordingly I am of the opinion that the appeal should be allowed and that the plaintiff should be awarded the damages assessed by the learned trial Judge.

The respondents must pay the costs of this appeal but as regards the costs in the Court below, since practically the whole of the time taken in that Court was occupied by the plaintiff's affirmative case of negligence, an issue on which he has throughout been unsuccessful, I think there should be no order as to the costs of the proceedings in the Court below.

Thomson C.J. (F.M.) : — I have had the benefit of reading the judgment of the Chief Justice of Singapore in this appeal with which I am in entire agreement.

In the ordinary way as we are differing from the learned trial Judge I should have added a few words of my own. In the present case, however, the course of reasoning which has compelled my brother Whyatt to the conclusions stated by him is so much the same as the course of reasoning which has compelled me to the same conclusions that I feel no useful purpose would be served by my stating it again in my own words.

I agree that the appeal should be allowed and I agree with the proposed order as to costs.

Knight J. : — I too have had the benefit of reading the judgment of the learned Chief Justice of Singapore with which I am in full agreement.

Appeal allowed.

Solicitors : *Murphy, Dunbar & Chung; Allen & Gledhill.*

Re PETER WONG & ANOR.

[O. C. J. (Whyatt C.J.) March 8, 1957]

[Singapore — Consolidated Bankruptcy Petitions Nos. 430 & 576 of 1955 and 7 & 8 of 1957]

Bankruptcy Ordinance (Cap. 11), s. 3 — Bankruptcy notice giving an address of the creditor outside the jurisdiction of the Court — Invalidity — Debtor possessed of no property liable to seizure.

In this case the applicants applied to withdraw two bankruptcy petitions filed in 1956 against Peter Wong and his wife. The allegation in those petitions were that the debtors had committed an act of bankruptcy in failing to comply with bankruptcy notices served on them in 1955 but it appeared that the address of the creditors given in the bankruptcy notices were outside the jurisdiction. While these two petitions were still pending, two further bankruptcy petitions were filed against the two debtors, the act of bankruptcy relied on being that the Sheriff had made a return that the debtor was possessed of no property liable to seizure.

Held: (1) the bankruptcy notices served on the debtors in 1955 were invalid as the address of the creditors given in the bankruptcy notices was outside the jurisdiction;

(2) as the Sheriff had made a return that the debtor was possessed of no property liable to seizure and as on the facts it appeared that the Sheriff's return was correct, receiving and adjudication orders must be made against the debtors.

Case referred to :—

(1) *Re a Debtor* (1912) 1 K.B. 53.

BANKRUPTCY PETITION.

D. G. Osborne-Jones for the debtors.

T. E. Atkinson for the creditors.

Whyatt C.J. : — On the 29th March, 1956, two bankruptcy petitions were filed against Peter Wong and his wife, Lily Leung, by Harlow & Jones Ltd. and Industrial Specialty (Iron & Steel) Ltd. who were judgment creditors for substantial sums. Nine months later, on the 11th January 1957, while the 1956 petitions were still pending, two further bankruptcy petitions were filed against these two debtors, the creditors on this occasion being Mirandolle Voute Ltd. All four petitions came on for hearing before me on the 11th February when I reserved my decision on an application to withdraw the two 1956 petitions but made receiving orders and adjudication orders on the two 1957 petitions, stating that I would give my reasons for doing so later. It will be convenient to deal with all these outstanding matters in this judgment.

The 1956 petitions alleged that the debtors had committed an act of bankruptcy in failing to comply with bankruptcy notices served on them on the 1st October 1955 and the 2nd December 1955 respectively. The address of the creditors given in the bankruptcy notices was No. 18 Buckingham Gate, London, England and when the petitions came before the Judge sitting in bankruptcy on the 14th December 1956, counsel for the debtors raised the objection that the bankruptcy notices were bad since the address was outside the jurisdiction; he cited in support of his argument the case of *Re a Debtor*[1]. Counsel for the creditors did not take the point that the debtors had not given proper notice of this objection under the Bankruptcy Rules and after some discussion, the learned Judge agreed to adjourn the hearing of the petitions to allow the creditors to consider their position. When the petitions eventually came on for hearing before me on the 11th February 1957, the creditors asked leave to withdraw